

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
JESSE J. McNABB, )  
-VS- ) No. 04-0544  
PEOPLES GAS LIGHT AND COKE COMPANY )  
Complaint as to billing/charges )  
in Chicago, Illinois. )

Chicago, Illinois  
January 4, 2006

Met pursuant to notice at 11:30 a.m.

BEFORE:  
MS. CLAUDIA SAINOT, Administrative Law Judge.  
APPEARANCES:

MR. JUAN OOINK,  
18 West Dundee  
Wheeling, Illinois 60090  
Appearing for Jesse J. McNabb;

MR. MARK L. GOLDSTEIN,  
108 Wilmot Road  
Suite 330  
Deerfield, Illinois 60015  
Appearing for Peoples Gas Light and  
Coke Company.

SULLIVAN REPORTING COMPANY, by  
Kerry L. Knapp, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>	Re-	Re-	By
3	Willie Traylor	36	65	71					
4	Steven J. Krol (Adverse)								73
5	Ottaway Stewart	112	123						
6									
7									
8									
9									
10									
11		<u>E</u>	<u>X</u>	<u>H</u>	<u>I</u>	<u>B</u>	<u>I</u>	<u>T</u>	<u>S</u>
12	<u>Number</u>	<u>For Identification</u>				<u>In Evidence</u>			
13	None marked								
14									
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1 JUDGE SAINSOT: Okay. By the authority vested in  
2 me by the Illinois Commerce Commission, I now call  
3 Docket No. 04-0544. It is the complaint of Jesse J.  
4 McNabb vs. Peoples Gas Light and Coke Company. And  
5 it concerns billing in Chicago, Illinois.

6 Will the parties identify themselves for the  
7 record, please.

8 MR. OOINK: Juan Ooink, O-o-i-n-k, on behalf of  
9 Law Office of Steven M. Goldman, on behalf of Jesse  
10 McNabb. Address is 18 West Dundee, Wheeling,  
11 Illinois 60090. Phone number is (847) 215-2600.

12 MR. GOLDSTEIN: On behalf of the Peoples Gas  
13 Light and Coke Company, Mark L. Goldstein, 108 Wilmot  
14 Road, Suite 330, Deerfield, Illinois 60015. My  
15 telephone number is (847) 580-5480.

16 JUDGE SAINSOT: For the record, Mr. Goldstein,  
17 I'm in receipt of your petition for interlocutory  
18 review. I received it December 30th in the  
19 afternoon. I will give it as expedited treatment as  
20 I can. But since I received it on the afternoon  
21 before a holiday, there was not time to postpone the  
22 trial.

1           And, frankly, given that December 30th was a  
2   Friday before the holiday and the last day of the  
3   year and that I broke my foot in two places the week  
4   before, it's a minor miracle that I was at the office  
5   at all on that Friday afternoon.

6           So I just wanted to note that for the  
7   record. Okay.

8           Mr. Ooink?

9           MR. OOINK: At this point, Mr. McNabb has a few  
10 preliminary matters.

11           First I'm requesting to adopt the prior  
12 testimony from the previous hearing of Mr. McNabb and  
13 Mr. Krol who is present. Doing so is -- I'm asking  
14 for an efficiency just so that we don't have to  
15 reiterate testimony that was already elicited.

16           As you know, this rehearing requested to  
17 clear up that record and I intend to do so through  
18 the testimony of Mr. McNabb, Mr. Traylor who is also  
19 present, Ms. Johnson, and Mr. Krol.

20           JUDGE SAINSOT: So you're asking me to take  
21 administrative notice of the hearings before?

22           MR. OOINK: Please.

1           MR. GOLDSTEIN: Judge, the record has already  
2       been made in this case. There was a hearing well  
3       over a year ago. That testimony is of record. I  
4       don't understand the motion in any way, shape, manner  
5       or form.

6           There is just one record that the Commission  
7       is going to be looking at in this proceeding. And I  
8       don't know what purpose is served other than an  
9       attempt by Mr. Ooink to elicit further examination of  
10      Mr. McNabb, which, of course, I would object to.

11          JUDGE SAINSOT: What is the purpose of taking  
12      administrative notice of the previous --

13          MR. OOINK: Like I said, just for judicial  
14      efficiency so that I don't have to elicit the same  
15      testimony from Mr. McNabb. Mr. McNabb is going to  
16      testify to some additional matters that he was unable  
17      to testify to on the first hearing.

18          JUDGE SAINSOT: Like what?

19          MR. OOINK: Respectfully, he is going to testify  
20      to his exact billing -- I'm sorry. He is going to  
21      testify to his exact electrical billing, how much he  
22      was billed on certain periods, given subpoenaed

1 material he was unable to obtain for his first  
2 hearing which is also on the record saying that he  
3 was unable to obtain those electrical bills from  
4 ComEd because they requested a subpoena.

5 I have subsequently subpoenaed that material  
6 and have it. Mr. McNabb is prepared to testify to  
7 that billing information.

8 MR. GOLDSTEIN: Judge --

9 MR. OOINK: Further, to clarify that nobody, in  
10 fact, lived in the house and also that no devices in  
11 the house used any gas or were in the house that used  
12 gas or, if they were in the house, they were not  
13 functional.

14 Further, Mr. Krol will be called to testify  
15 as to clear up the record as to his investigation.  
16 There is a number of holes in the prior record as to  
17 Mr. Krol's investigation.

18 He testified, too, that he saw a furnace, a  
19 water --

20 MR. GOLDSTEIN: Judge, is he going to testify to  
21 this or are we just going to go through this forever  
22 and forever?

1 JUDGE SAINSOT: Well, I don't know where to  
2 begin. I asked him like what and he answered the  
3 question. So he's entitled to answer the question.

4 However, you are going into great detail.

5 MR. OOINK: Your Honor, I reserve my response for  
6 each individual witness. If the -- if Mr. Goldstein  
7 is going to object to every single witness I call,  
8 then I can address the issue for each witness I have.

9 MR. GOLDSTEIN: Well, I have a statement I'd like  
10 to make.

11 JUDGE SAINSOT: A statement?

12 MR. GOLDSTEIN: Yes.

13 JUDGE SAINSOT: What do you mean, a statement?

14 MR. GOLDSTEIN: I want to make it very clear for  
15 the record that my participation in this hearing  
16 should not and cannot be construed as any kind of a  
17 waiver of the 150-day rehearing rule, which is the  
18 subject of Peoples Gas' motion for involuntary  
19 dismissal of this complaint.

20 Peoples has raised this motion for  
21 involuntary dismissal. Our subsequent pleadings have  
22 raised the issue through a review of Section 10-113

1 of the Public Utilities Act, as well as the Liberty  
2 Trucking case which happens to be the only case on  
3 point with respect to the 150-day rehearing rule.

4 We have consistently requested that you and  
5 the Commission just read the statute and the  
6 applicable law in Liberty Trucking. We are here  
7 because of the subpoena of Mr. Krol and he was our  
8 witness.

9 You granted the subpoena over our objection.  
10 And that's the reason we're here. We understand that  
11 the mere filing of the petition for interlocutory  
12 review does not suspend this hearing.

13 The bottom line is that we're here pursuant  
14 to the subpoena, we believe the complaint should be  
15 dismissed by the Commission, and it is clear from the  
16 Liberty Trucking decision, as well as Section 10-113  
17 of the Act that the Commission has lost jurisdiction  
18 of this complaint matter, and we're here merely  
19 because there's a hearing set and Mr. Krol has been  
20 subpoenaed.

21 JUDGE SAINSOT: Okay. That's duly noted,  
22 Mr. Goldstein.



1           MR. GOLDSTEIN:   And we are not going to waive any  
2           of our rights for anything that may happen  
3           subsequently to this statement.

4           JUDGE SAINSOT:   Getting back to Mr. Ooink's  
5           motion, however, I'm going to grant your motion.

6                       For the record, I think I would -- and the  
7           Commission would have to take note of anything that  
8           happened before anyway.   This is a limited rehearing.

9           MR. OOINK:   Judge, it was just for clarity to  
10          make sure that it would be adopted.

11          JUDGE SAINSOT:   Sure.

12          MR. OOINK:   At this point, Mr. McNabb is going to  
13          call Willie Traylor.

14          MR. GOLDSTEIN:   I would like to make a motion to  
15          exclude the other witness.

16          MR. OOINK:   No objection, your Honor.   But by the  
17          same token, though, Mr. Krol would have to be  
18          excused.

19          MR. GOLDSTEIN:   Fine with me.

20          JUDGE SAINSOT:   Your motion is granted.

21                       Anyone who is not a party which I believe --

22          MR. GOLDSTEIN:   Mr. Schmoldt is here on behalf of

1 Peoples Gas. He is not a witness.

2 JUDGE SAINSOT: Right

3 MR. OOINK: No objection. He can stay.

4 JUDGE SAINSOT: Mr. Traylor, could you raise your  
5 right hand.

6 (Witness sworn.)

7 WILLIE TRAYLOR,  
8 called as a witness herein, having been first duly  
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY

12 MR. OOINK:

13 Q. Mr. Traylor, you're going to have to speak  
14 up so the court reporter can hear you.

15 A. I do.

16 Q. Mr. Traylor, can you please introduce  
17 yourself to the judge.

18 A. My name is Willie Traylor. I live at 11400  
19 South May Street, Chicago, Illinois 60643.

20 Q. Mr. Traylor, how old are you?

21 A. 69.

22 Q. Are you currently employed?

1           A.    Retired.

2           Q.    What are you retired from?

3           A.    General Motors.

4           Q.    How long did you work for them?

5           A.    23 years and nine months.

6           Q.    What did you do?

7           A.    I was an inspector.

8           Q.    Mr. Traylor, are you currently married?

9           A.    Yes, sir.

10          Q.    How long have you been married?

11          A.    49 years.

12          Q.    Do you have any children?

13          A.    Seven.

14          Q.    How old are they?

15          A.    From 28 to 50.

16          Q.    Mr. Traylor, are you familiar with Jesse

17   McNabb?

18          A.    Yes, sir.

19          Q.    Do you see him in the room today?

20          A.    Yes, sir.

21          Q.    Can you describe the article of clothing

22   that he's wearing?

1           A.    Black jacket --

2           MR. GOLDSTEIN:   I'm going to object to this,  
3   Judge.   Let's get to the meat and potatoes of why  
4   Mr. -- this witness is here instead of trying to  
5   describe his clothing.   I'll stipulate that he knows  
6   Mr. McNabb.

7           MR. OOINK:   Judge, as you know, you're going to  
8   make a recommendation to the Illinois Commerce  
9   Commission.   You have the right to know what this  
10   witness knows as far as how he is familiar with  
11   Mr. McNabb.

12          JUDGE SAINSOT:   I'm going to allow Counsel a  
13   little latitude.   Your objection is overruled.

14   BY MR. OOINK:

15          Q.    How do you know Mr. McNabb?

16          A.    I met Mr. McNabb after he bought the house  
17   on May Street.   I met him a year or so after he  
18   bought the house.

19          Q.    And when you say "the house," are you  
20   referring to the house at 11411 South May Street?

21          A.    Yes, sir.

22          Q.    Okay.   And how long have you known

1 Mr. McNabb?

2 A. Around the same time.

3 Q. Okay. So is that seven years? Ten years?

4 How long?

5 A. From '92 until -- that's about 13 years.

6 Q. Okay. Mr. Traylor, are you familiar with

7 the 11411 South May?

8 A. I'm familiar with it, yes, sir.

9 Q. How are you familiar with that house?

10 A. Well, I know when it was built.

11 Q. Where is your house located in relation to

12 that house?

13 A. Adjacent three doors. I'm on the west side

14 of the street and 11411 is on the east side of the

15 street three doors down the street.

16 Q. Mr. Traylor, can you see 11411 from your

17 house?

18 A. Yeah.

19 Q. During the period of June 2nd, '93, to

20 July 8th, 2002, were you ever in the house at 11411

21 South May?

22 A. Yes, sir, one time.

1           Q.    Do you recall when you were in the house?

2           A.    Well, I was in -- I was looking at it to --

3 seeking out buying the house, you know what I mean.

4           Q.    But do you remember what date,

5 approximately, you were in the house?

6           A.    Yeah. I believe it was on Wednesday in '97

7 when I was in there.

8           Q.    Do you know what month, approximately?

9           A.    It was around June.

10          Q.    Were you in the house by yourself?

11          A.    No. It was a friend of mine in the house

12 with me.

13          Q.    Was Mr. McNabb with you?

14          A.    No.

15          Q.    Did you have permission to go in the house?

16          A.    No. The door was open, so I just went on

17 in.

18          Q.    In June of '97, can you describe the

19 exterior of the house?

20          A.    It was completely wrecked, completely

21 wrecked. When I mean completely wrecked, it was

22 nothing in there.

1           Q.    The outside of the house, not the inside.

2           A.    The outside.  Well, the outside of the house

3   was good.

4           Q.    Can you describe what the windows looked

5   like?

6           A.    The windows was good.

7           Q.    What do you mean by good?  Were they boarded

8   up?

9           A.    No.

10          Q.    Did you go into the house?

11          A.    Yes.

12          Q.    How did you make entry into the house

13   without Mr. McNabb's permission?

14          A.    The door was open.

15          Q.    And when you got in the house, what did you

16   do?

17          A.    Just looked around.

18          Q.    How long were you in that house?

19          A.    Roughly, 15 minutes.

20          Q.    And do you recall if the electricity was on

21   at that time?

22          A.    I don't recall, but wasn't anything in the

1       house to use electricity.  Wasn't nothing in the  
2       house, nothing.

3           Q.    What areas of the house did you go into?

4           A.    I went upstairs, bedroom, downstairs,  
5       kitchen, all over.

6           Q.    In the basement, did you notice any -- did  
7       you notice if there was a furnace present?

8           A.    Wasn't anything.

9           Q.    So there was no -- you didn't see a furnace  
10       in the house?

11          A.    No, sir.

12          Q.    What about a water heater?

13          A.    No, sir.

14          Q.    Did you see a washer in the house?

15          A.    No, sir.

16          Q.    Did you see a dryer in the house?

17          A.    No, sir.

18          Q.    What about upstairs, did you go into the  
19       kitchen?

20          A.    Yes, sir.

21          Q.    Did you see a stove in the house?

22          A.    No, sir.



1 Q. And what about a refrigerator?

2 A. No.

3 Q. Do you recall if you even tried to turn on

4 the lights?

5 A. No, sir.

6 Q. What was the temperature in the house?

7 A. I can't say. I don't know. I don't know

8 what the temperature was in the house. I don't know.

9 Q. Was it warmer or cooler than outside?

10 A. It was cooler than outside.

11 Q. What was the interior -- what did the

12 interior look like of the house?

13 A. We talking about inside now, right?

14 Q. Right.

15 A. It was wrecked. It was completely wrecked.

16 Q. What do you mean by wrecked? Can you give

17 us some examples?

18 A. Holes all in the walls and everything. Just

19 everything. The house was -- it wasn't livable at

20 all.

21 Q. What about the basement of the house,

22 anything --

1           A.    Same thing, sir.

2           Q.    Did you -- in '97, did you know if anybody

3   was living in the house?

4           A.    No, sir, wasn't nobody living in it.

5           Q.    When did you first become aware that

6   Mr. McNabb had purchased the house?

7           A.    Well, after he bought it, I met him and he

8   told me he had bought it.

9           Q.    What year?

10          A.    About '92, '93, probably '93.

11          Q.    And you were still living at 11400 South May

12   at that time?

13          A.    Yes, sir.

14          Q.    And during the period of June 2nd, '93, to

15   July 8th, 2002, to the best of your knowledge, do you

16   know if anybody lived at 11411 South May?

17          A.    No, sir, nobody lived there.

18          Q.    Why do you say that?

19          A.    If anybody had lived there, I would have

20   seen them.

21          Q.    Why would you have seen that?

22          A.    Well, you're right across the street.  You

1 know when it's a house vacant and when you know  
2 somebody is living in it. And wasn't nobody living  
3 in it.

4 Q. During that period, June 2nd, '93, to  
5 July 8th, 2002, did you ever see any lights on in the  
6 house?

7 A. No, sir.

8 Q. Did you ever see anybody besides Mr. McNabb  
9 come and go from the house?

10 A. No, sir.

11 Q. Now, can you briefly describe the house that  
12 you live in, what it -- what's the --

13 MR. GOLDSTEIN: Objection. Irrelevant.

14 MR. OOINK: It's relevant because I'm going to  
15 show that -- comparable electrical bills between  
16 Mr. Traylor's house and Mr. McNabb's house during the  
17 alleged period of time to show that, in fact,  
18 Mr. Traylor -- his electrical bills are going to be  
19 substantially higher than Mr. McNabb's --

20 MR. GOLDSTEIN: Objection to relevance.

21 MR. OOINK: -- which is going to be used to show  
22 that indeed no devices were plugged in or used that

1       would utilize gas during the alleged period of use.

2               JUDGE SAINSOT:   I'm not sure that establishes  
3       that, Mr. Ooink, but I'll allow it.   Are you -- I  
4       think -- are you trying to say that the houses were  
5       of similar dimensions?

6               MR. OOINK:   Mr. Traylor is prepared to testify to  
7       obviously his house and the similarities between his  
8       house and Mr. McNabb's house.

9               JUDGE SAINSOT:   All right.   You can continue.

10       BY MR. OOINK:

11              Q.   Mr. Traylor, can you briefly describe the  
12       house that you live in at 11400 South May Street.

13              A.   It's a bi-level, half basement, four  
14       bedroom, living room, dining room, kitchen.

15              Q.   And what type of gas-using devices do you  
16       have installed in that house?

17              A.   Hot water, cooking.   That's it.

18              Q.   Do you have a furnace installed?

19              A.   Yeah.   Well, heat, yes, sir.

20              Q.   Is that a gas furnace?

21              A.   Yes, it is.

22              Q.   So that the record is clear, you have a gas

1       furnace that's installed in your house?

2           A.    Yes.

3           Q.    And you have a water heater that uses gas?

4           A.    Yes, sir.

5           Q.    And your stove or range uses gas?

6           A.    Yes, sir.

7           Q.    Are there any other appliances or components

8       in your house that would utilize gas?

9           A.    No, sir.

10          Q.    And is your house similar to Mr. McNabb's

11       house?

12          A.    It's larger than his house.

13          Q.    And when you say larger, percentage-wise how

14       much larger?

15          A.    Give or take, I say 15 percent larger than

16       his house.

17          Q.    And during the period of June 2nd, 1993, and

18       July 8th, 2002, all your gas-using devices were

19       installed in your house?

20          A.    Yes, sir.

21          Q.    And you had electricity on during that

22       period?

1           A.    Yes, sir.

2           Q.    And, Mr. Traylor, do you recall your  
3   electrical bill for September 28th, 1998?

4           A.    No.

5           Q.    Okay.  Is your memory completely exhausted?

6           A.    No.

7           Q.    Your memory -- so you do recall what the  
8   bill was?

9           A.    Well, I would be guessing.  I can't guess.

10          Q.    So you're not sure?

11          A.    No.

12          Q.    So is there anything that would refresh your  
13   recollection, refresh your memory?

14          A.    Yeah.

15          Q.    Okay.

16          MR. GOLDSTEIN:  I'm going to object to this  
17   entire line of questioning.  It's totally completely  
18   irrelevant what Mr. Traylor's electric bill was, what  
19   his gas bill was for his house.  It has absolutely  
20   nothing at all to do with the theft of gas at  
21   Mr. McNabb's property for the 1993 to 2002 period.

22          JUDGE SAINSOT:  It's overruled.  Continue.

1 BY MR. OOINK:

2 Q. Is there something that would refresh your  
3 memory?

4 A. Yes.

5 Q. Do you know what that is?

6 A. A bill.

7 Q. Would the billing history for that house  
8 refresh your memory?

9 A. Yes.

10 MR. GOLDSTEIN: I'm going to object to that, too,  
11 Judge. If he has a bill that was issued to  
12 Mr. Traylor, let him present the bill.

13 JUDGE SAINSOT: What is the billing history?

14 MR. OOINK: Your Honor, if I may, his objection  
15 is to my refreshing the witness' recollection.

16 Rules of evidence would allow me to refresh  
17 his recollection with a napkin, a piece of toilet  
18 paper that has something written on it. I can  
19 refresh his recollection with something written on my  
20 hand if he says it would refresh his recollection.

21 The objection is --

22 JUDGE SAINSOT: I understand that, But I don't

1 understand what a billing history is.

2 MR. OOINK: It's the ComEd subpoenaed material  
3 that I got from ComEd regarding the billing history  
4 from Mr. Traylor's house and subsequently  
5 Mr. McNabb's house.

6 JUDGE SAINSOT: So these are ComEd records?

7 MR. OOINK: These are ComEd records.

8 JUDGE SAINSOT: Objection overruled. Continue.

9 MR. OOINK: Let the record reflect that I'm  
10 showing opposing counsel what has been previously  
11 marked as Complainant's -- I believe he's on  
12 number -- Exhibit No. 3.

13 MR. GOLDSTEIN: Okay.

14 MR. OOINK: Let the record also reflect I am now  
15 showing Mr. Traylor what's been previously marked as  
16 Complainant's No. 3 which is a billing history  
17 subpoenaed from ComEd utilized only to refresh his  
18 recollection as to the billing date and the bill  
19 amount for his electrical bill on September 28th,  
20 1998.

21 BY MR. OOINK:

22 Q. Mr. McNabb, can you please review the



1 records --

2 MR. GOLDSTEIN: It's not Mr. McNabb.

3 MR. OOINK: I'm sorry.

4 BY MR. OOINK:

5 Q. Mr. Traylor, can you please review the

6 record and tell me when your memory is refreshed as

7 to the amount of your bill on September 28th, 1998.

8 A. 67 --

9 Q. Is your memory refreshed?

10 A. Yes.

11 Q. Okay. And what was that bill amount?

12 A. \$67.55.

13 MR. OOINK: Your Honor, at this point, I'm

14 requesting to enter in the billing history that I

15 subpoenaed from ComEd for judicial efficiency. If

16 Mr. Goldstein wants, I can go through every single

17 one of these and refresh Mr. Traylor's recollection.

18 MR. GOLDSTEIN: I have just one question in the

19 manner of voir dire. The document is -- there is a

20 writing on the top of it, Billing History for 11400

21 South May. Who wrote that in?

22 MR. OOINK: Your Honor, I have an affidavit from

1 a Peoples Gas employee who submitted the billing.  
2 This billing information I got directly from --  
3 subpoenaed from ComEd exactly as Mr. Goldstein was  
4 presented with it.

5 JUDGE SAINSOT: So you don't know who wrote it  
6 in?

7 MR. OOINK: According to the affidavit and my  
8 communications with ComEd employees, they actually  
9 wrote that in.

10 JUDGE SAINSOT: Are those records that you  
11 subpoenaed?

12 MR. OOINK: Yes, they are.

13 MR. GOLDSTEIN: I'm going to object again, Judge.  
14 Along with the subpoena, Mr. Ooink could have  
15 subpoenaed in an actual witness with respect to the  
16 billing history. Obviously, I cannot cross-examine a  
17 piece of paper.

18 MR. OOINK: If Mr. Goldstein insists, then, like  
19 I said, I can go through each individual bill --  
20 billing period.

21 MR. GOLDSTEIN: It's all irrelevant anyway.

22 MR. OOINK: I'm just requesting -- it's a request

1       for judicial efficiency as to getting the information  
2       in because it's going to come in anyway.

3               JUDGE SAINSOT:   Mr. Goldstein has a point,  
4       though.   He cannot cross-examine a piece of paper.  
5       If -- I mean, this is probably form over substance  
6       because you can certainly ask your client what his  
7       bills were.

8               But Mr. Goldstein -- or your client.   Your  
9       witness, I mean.   But Mr. Goldstein can cross-examine  
10      your witness.   He cannot cross-examine the piece of  
11      paper.

12              MR. OOINK:   I understand.

13              JUDGE SAINSOT:   So you're seeking to have that  
14      piece of paper admitted into evidence?

15              MR. OOINK:   Yes.

16              JUDGE SAINSOT:   Okay.   That is denied for the  
17      record.

18              BY MR. OOINK:

19              Q.   Mr. Traylor, do you recall your electrical  
20      bill amount for October 27th of 1998?

21              MR. GOLDSTEIN:   Could I ask a question?   Why are  
22      bills for a particular month or two in 1998 relevant

1 to anything with respect to Mr. McNabb's property? I  
2 just don't understand the purpose of this.

3 Maybe we could short circuit the objections  
4 if we could find out where Mr. Ooink is headed with  
5 all these questions that seem to me to have no  
6 relevance with respect to whatever occurred at  
7 Mr. McNabb's property.

8 MR. OOINK: Judge, as you know, we're here  
9 because Mr. McNabb was fictitiously billed by  
10 Peoples Gas as to -- well, basically, let's put it  
11 the way it is.

12 Peoples Gas is accusing Mr. McNabb of theft  
13 of gas, plain and simple. And it's Mr. McNabb's  
14 burden by preponderance of the evidence to show that  
15 he did not steal that gas. And one --

16 JUDGE SAINSOT: All right. Where are you going  
17 with all these?

18 MR. OOINK: One way to do that and, really, one  
19 of the only ways to do that is to show a comparable  
20 property that had gas-utilizing devices installed in  
21 it.

22 Because Mr. McNabb's property had no way of

1 reading the gauge, Peoples Gas have no way of telling  
2 us how much -- exactly how much gas Mr. McNabb  
3 allegedly stole.

4 The only other comparable utility then would  
5 be electricity to show that, in fact, Mr. Traylor's  
6 property, which is a comparable property, having the  
7 gas-utilizing devices installed in it, has a higher  
8 electrical bill during certain periods of time.

9 I was just going to present a picture of  
10 Mr. Traylor's electrical bills and Mr. McNabb's  
11 electrical bills without going into excruciating  
12 detail as to every single day during the alleged  
13 period.

14 JUDGE SAINSOT: What does that establish?

15 MR. OOINK: It establishes that Mr. McNabb had no  
16 devices connected into his house that were drawing  
17 electricity that would also draw gas. Water heaters,  
18 furnaces, stoves, appliances in general that use gas  
19 also utilize electricity. Also establishes that no  
20 one was, in fact, living there because no electricity  
21 was being used.

22 JUDGE SAINSOT: First of all, Mr. Ooink, I hate

1       to tell you, but until two months ago, I had a stove  
2       that didn't use electricity. It's quite possible to  
3       have appliances that use gas but not electricity.

4           MR. OOINK: And I'm not saying that it's not  
5       possible. I'm saying one of the ways -- one of the  
6       tools Mr. McNabb has is to show a comparable property  
7       to show that no one was living there and no devices  
8       were drawing electricity; therefore, how -- devices  
9       also --

10           I mean, Mr. Goldstein can bring up that  
11       point. He can argue all he wants as to that. But  
12       this is one of Mr. McNabb's tools. The burden is on  
13       him. And I'm asking that you don't take that away  
14       from him.

15           MR. GOLDSTEIN: Not only is Mr. Ooink incorrect  
16       as to the burden or preponderance of the evidence  
17       with respect to a theft of gas, but I believe he's  
18       made a perfect argument as to why Mr. Traylor's  
19       testimony, if there is going to be any, with respect  
20       to electric usage at his own residence is totally and  
21       completely irrelevant to whatever may or may not have  
22       occurred at Mr. McNabb's residence.

1                   These are just two separate matters. They  
2                   have no relevance to each other. Mr. Traylor has  
3                   testified as to what he observed on a particular date  
4                   when he accessed Mr. McNabb's property.

5                   That's all he has testified to. And to ask  
6                   him questions about all other dates and all other  
7                   times is just a total irrelevant waste of time.

8                   MR. OOINK: To say it's an irrelevant waste of  
9                   time, it is not an irrelevant waste of time. It is  
10                  extremely relevant.

11                  One of Mr. McNabb's contentions is that no  
12                  one lived in the house. If no one lived in the  
13                  house, then no one is using electricity. And in  
14                  order to compare that to another house where someone  
15                  else was living, which Mr. Traylor will do --

16                  JUDGE SAINSOT: Okay. For that very, very  
17                  limited purpose, I will allow it.

18                  MR. GOLDSTEIN: What are you going to allow with  
19                  respect to Mr. Traylor's examination?

20                  JUDGE SAINSOT: Just evidence as to what his  
21                  electric bills are, but for that very limited purpose  
22                  to establish a different and somewhat comparable use.

1 And that's it. Okay. Proceed.

2 MR. OOINK: Okay. Thank you.

3 BY MR. OOINK:

4 Q. I believe I was on October 27, 1998,

5 Mr. Traylor. Do you recall what your electrical bill

6 was that month?

7 A. No, sir.

8 Q. Okay. Is your memory completely exhausted?

9 You don't remember at all?

10 A. No.

11 Q. Is there anything that would refresh your

12 recollection?

13 A. Yes, sir.

14 Q. Is that the billing history I previously

15 showed you marked as Complainant's No. 3?

16 A. That would do it.

17 Q. Let the record reflect I am showing

18 Mr. Traylor what's been previously marked as

19 Complainant's No. 3 and also previously shown as the

20 billing history subpoenaed from ComEd.

21 Mr. Traylor, what was your electrical bill

22 for October 27th 1998?



1           A.   \$57.59?

2           Q.   Now I'm going to move on to September 27th,  
3   1999. Do you remember what your electrical bill was  
4   for that billing period?

5           A.   No, sir, I don't.

6           Q.   Is your memory completely exhausted?

7           A.   Yes.

8           Q.   Would the billing history refresh your  
9   recollection?

10          A.   Yes, sir.

11          Q.   Let the record reflect I am handing  
12   Mr. Traylor what's been previously marked as  
13   Complainant's No 3, the billing history subpoenaed  
14   from ComEd.

15                Mr. Traylor, what was your electrical bill  
16   amount for September 27, 1999?

17          A.   \$67.59.

18          Q.   For September 27th, 1999, Mr. Traylor?

19                MR. GOLDSTEIN: That's his testimony, Counsel.

20   BY MR. OOINK:

21          Q.   Mr. Traylor, are you certain that that is  
22   your -- that was your billing amount for September

1       27th, 1999?

2           A.    I thought I understood you to say November.

3           Q.    No.   I said September 27th, 1999.

4           A.    I don't remember.

5           Q.    Your previous testimony, what month was that

6       for?

7           A.    November.

8           Q.    That was for November 24th, 1999?

9           A.    Yes.

10          Q.    And you said that was \$66.94 for that month?

11          A.    Yes.

12          Q.    Okay.   But for September 27, 1999, you're

13       not clear on what that bill was?

14          A.    No.

15          Q.    And your memory is completely exhausted?

16          A.    Yes, sir.

17          Q.    And the billing history would refresh your

18       memory?

19          A.    Yes, sir.

20          Q.    Let the record reflect I'm showing

21       Mr. Traylor what has been previously marked as

22       Complainant's No. 3, the ComEd billing history

1 subpoenaed from ComEd.

2 Mr. Traylor, what was your electrical bill  
3 amount for September 27, 1999? Do you remember or do  
4 you need your memory refreshed again?

5 A. I need it refreshed again.

6 Q. Let the record reflect I'm showing  
7 Mr. Traylor what's been previously marked as  
8 Complainant's No. 3.

9 September 27th, Mr. Traylor. Mr. Traylor,  
10 what was your electrical bill amount for  
11 September 27th, 1999?

12 A. \$83.09.

13 Q. Mr. Traylor, for October 24th, 2000, do you  
14 remember what your electrical bill was?

15 A. No, sir.

16 Q. Is your memory completely exhausted?

17 A. Yes.

18 Q. Would the billing history refresh your  
19 recollection?

20 A. Yes, sir.

21 Q. Let the record reflect I'm showing  
22 Mr. Traylor what's been previously marked as

1 Complainant's Exhibit No. 3.

2 A. Now, what date did you say?

3 Q. I believe it's October -- if I could see the  
4 sheet again. October 24th, 2000, what was it?

5 A. \$50.83.

6 Q. For December 29th, 2000, Mr. Traylor, do you  
7 remember what your bill was?

8 A. No, sir.

9 JUDGE SAINSOT: Mr. Ooink, do we really have  
10 to -- we have -- I've got at least four samples. Do  
11 we really have to do more than four samples?

12 MR. OOINK: Just this last one and we can be  
13 done.

14 JUDGE SAINSOT: Okay.

15 BY MR. OOINK:

16 Q. Mr. Traylor, is your memory completely  
17 exhausted?

18 A. Yes, sir.

19 Q. Would the billing history refresh your  
20 recollection?

21 A. Yes, sir.

22 Q. Let the record reflect I'm showing

1 Mr. Traylor what's been previously marked as  
2 Complainant's Exhibit No. 3.

3 On December 29, 2000, do you know what your  
4 electrical bill was?

5 A. Yes, sir.

6 Q. What was it? Do you need your memory  
7 refreshed again?

8 A. Yeah.

9 Q. December 29th, 2000. Do you remember what  
10 it is?

11 A. Yes, sir.

12 Q. What is it?

13 A. \$57.90.

14 Q. For December 29th, 2000, are you certain of  
15 that?

16 A. 29th or 27th?

17 Q. December 29th.

18 A. I'm not sure.

19 Q. December 29th, 2000, Mr. Traylor. Are you  
20 certain what it is now?

21 A. Yes, sir.

22 Q. And what is it?

1           A.     \$57.51.

2           Q.     And, Mr. Traylor, in your house, you're the  
3 one who pays the electrical bills?

4           A.     Yes, sir.

5           Q.     And you paid the electrical bills during the  
6 period I've asked you?

7           A.     Yes, sir.

8           Q.     So that's why you're familiar with all the  
9 billing?

10          A.     Yes, sir.

11          MR. OOINK:   If I may have a moment.

12          JUDGE SAINSOT:   Sure.

13          MR. OOINK:   I have nothing further at this moment  
14 of Mr. Traylor.

15          JUDGE SAINSOT:   Your witness, Mr. Goldstein.

16          MR. GOLDSTEIN:   Yeah.   Again, without waiving  
17 whatever is contained in the petition for  
18 interlocutory review, I do have some questions of  
19 Mr. Traylor.

20

21

22

1 CROSS EXAMINATION

2 BY

3 MR. GOLDSTEIN:

4 Q. Mr. Traylor, do you know what your last  
5 electric bill was?

6 A. Yeah. The last one, yes, I remember the  
7 last one.

8 Q. What was the amount?

9 A. \$83.50.

10 Q. And for what period did that cover?

11 A. That covered November through -- I think  
12 it's November the 15th through December the 15th.

13 Q. All right. Now, did you ever see  
14 Complainant's Exhibit 3, what's been marked the  
15 billing history for 11400 South May, prior to the  
16 hearing today? Did you ever see this document  
17 before?

18 A. No, sir.

19 Q. Do you have the electric bills for your  
20 residence --

21 A. Yes, sir.

22 Q. -- for the 1999-2000 period for which

1 Mr. Ooink asked you questions about your own electric  
2 bill?

3 A. I really don't know. I really don't know.  
4 I can't answer that.

5 Q. So you can't make a comparison of what your  
6 actual bills that you received were to what's been  
7 marked as Complainant's Exhibit 3, can you?

8 A. No, sir, I couldn't answer that. I saw the  
9 bill in --

10 Q. Right. Now, you testified that you met  
11 Mr. McNabb sometime in 1992 or 1993?

12 A. Yes, sir.

13 Q. And you also testified that you were only at  
14 his residence sometime in June of 1997; is that  
15 correct?

16 A. Yes, sir.

17 Q. And you gained entry without Mr. McNabb's  
18 permission, didn't you?

19 A. Yes, sir.

20 Q. And could you tell me where in the residence  
21 Mr. McNabb's electric meter was located?

22 MR. OOINK: Objection. Relevance to where his



1 electric meter was located.

2 BY MR. GOLDSTEIN:

3 Q. Do you know where it was?

4 MR. OOINK: Objection. Relevance.

5 JUDGE SAINSOT: Hold on. Hold on. What's the

6 relevance of the electric meter?

7 MR. GOLDSTEIN: Well, I want to know what he saw.

8 He testified as to what he observed in the house.

9 I'm testing his recollection of what he observed.

10 JUDGE SAINSOT: Go ahead.

11 You can answer.

12 THE WITNESS: On the back of the house.

13 BY MR. GOLDSTEIN:

14 Q. Okay. And what about the gas meter, do you

15 know where that was located?

16 A. I didn't see a gas meter, sir.

17 Q. You didn't see a gas meter? Was it -- okay.

18 So you do not know whether the gas meter at the

19 residence was operating at all, do you?

20 A. Can I answer this one?

21 Q. I'm talking about Mr. McNabb's residence.

22 A. When I went in there, sir, there wasn't no

1 gas meter in there, period.

2 Q. There was no gas meter in the house?

3 A. No, sir.

4 Q. Okay. And am I correct that you've only  
5 been in the house one time?

6 A. Yes, sir.

7 Q. And that was in June of 1997?

8 A. Yes, sir.

9 MR. OOINK: Objection to the wording of the  
10 question. It's too general as to "only in the house  
11 one time." What period of time?

12 MR. GOLDSTEIN: Well --

13 JUDGE SAINSOT: Overruled.

14 BY MR. GOLDSTEIN:

15 Q. Now, do you know what gas appliances were in  
16 the house from whenever you met Mr. McNabb in 1992 or  
17 1993 to that -- whatever date that was in June  
18 of 1997?

19 A. I didn't go in the house, sir, at that time.

20 Q. So you don't know; right?

21 A. I don't know.

22 Q. And the day after that date, whatever

1       date -- do you know what date that was in June  
2       of 1997?

3           A.    It was a Wednesday.

4           Q.    But do you know what date?

5           A.    I don't know what the date was.  I mean, the  
6       day of the week, it was on a Wednesday.  I don't know  
7       the date of the month.

8           Q.    Now, from that Thursday on to July 8th,  
9       2002, you do not know what gas appliances were in the  
10      house at 11411 South May, do you?

11          A.    Wasn't anything, sir.

12          Q.    How do you know that?

13          A.    Because when I was in there in June --

14          Q.    I'm talking about that next day.  I'm not  
15      talking about the day you were there.  I'm talking  
16      about that day forward through July 8th of 2002, you  
17      did not -- you do not know of your own knowledge what  
18      gas appliances were on that property?

19          A.    No, sir.

20          Q.    Have you been advised by either Mr. McNabb  
21      or counsel for Mr. McNabb that Peoples Gas is  
22      claiming that there has been a theft of gas service

1 at 11411 South May, the property owned by Mr. McNabb?

2 A. He mentioned it.

3 Q. Now, for this June 2nd, 1993, to July 8th,  
4 2002 period, is it your testimony that you observed  
5 every single day the comings and goings of various  
6 people who may or may not have visited that property  
7 over that period of time?

8 A. My testimony, sir, was I didn't see anybody  
9 going in and out of that house except Mr. McNabb.

10 Q. Now, by the way, when you did visit the  
11 property on that Wednesday in June of 1997, do you  
12 recall whether it was during the day or at night?

13 A. Day.

14 Q. Did you turn on any of the light switches  
15 when you were there?

16 A. No, sir.

17 Q. Now, you say you're a retired person; is  
18 that right?

19 A. Yes, sir.

20 Q. When did you retire?

21 A. 1993, March 1st.

22 Q. Okay. Now, you also said you went down into

1       the basement of the house. Do you recall that?

2           A. Yes.

3           Q. Did you actually go down into the basement?

4           A. Yes, sir.

5           Q. Did you turn on the lights to get down into

6       the basement?

7           A. No, sir.

8           Q. How did you see to get down the stairs?

9           A. It was daytime. You could see.

10          Q. And am I also correct that you have not been

11       inside 11411 South May since that day in June

12       of 1997?

13          A. No, sir.

14          MR. GOLDSTEIN: I have nothing else.

15          JUDGE SAINSOT: Any redirect?

16          MR. OOINK: Yes.

17                   REDIRECT EXAMINATION

18                   BY

19                   MR. OOINK:

20          Q. Mr. Traylor, so that we're clear, you were

21       only in 11411 South May Street once?

22          A. Yes, sir.

1           MR. OOINK:   Nothing further.

2           JUDGE SAINSOT:   Okay.   You're excused.   Thank

3   you.

4           MR. OOINK:   Judge, if I may have a moment.

5           JUDGE SAINSOT:   Sure.

6                           (Discussion off the record.)

7                           (Witness sworn.)

8           MR. OOINK:   Judge, before I begin questioning

9   Mr. Krol, I'm just going to ask for a little leeway

10   as to my direct, allowing some cross with the

11   understanding that Mr. Krol was, in fact, a key

12   witness for Peoples Gas.

13           JUDGE SAINSOT:   And so you're saying you're

14   calling him as an adverse witness?

15           MR. OOINK:   Yes, sir.

16           JUDGE SAINSOT:   You can proceed.

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1 STEVEN J. KROL,  
2 a witness called by the petitioner herein, under  
3 Section 2-1102 of the Code of Civil Procedure, having  
4 been first duly sworn, was examined and testified as  
5 follows:

6 EXAMINATION

7 BY

8 MR. OOINK:

9 Q. Mr. Krol, you're currently an employee of  
10 Peoples Gas?

11 A. Yes, I am.

12 MR. GOLDSTEIN: Objection. This has been asked  
13 and answered, except for the part that he's  
14 currently --

15 MR. OOINK: Judge, I am --

16 JUDGE SAINSOT: It's overruled. Continue.

17 BY MR. OOINK:

18 Q. And you've been an employee for Peoples Gas  
19 close to 19 years?

20 MR. GOLDSTEIN: This is all part of the record,  
21 Judge. He testified to this already.

22 MR. OOINK: I am just trying to clear the record.

1 I am just trying to lay a quick foundation here for  
2 some of my later questions.

3 JUDGE SAINSOT: Yes. It's overruled. And he can  
4 lay a foundation, Mr. Goldstein, as long as he  
5 doesn't drag it out forever.

6 Proceed.

7 BY MR. OOINK:

8 Q. Mr. Krol, you've been employed with  
9 Peoples Gas for about 19 years?

10 A. Yes.

11 Q. In fact, you've been an investigator for  
12 about eight years?

13 A. Yes.

14 Q. Prior to being an investigator, what did you  
15 do for Peoples Gas?

16 A. I was an account representative and I was a  
17 current bill collector.

18 Q. And it's safe to say that you worked your  
19 way up through Peoples Gas to become an investigator?

20 A. Yes, I have.

21 Q. So. Mr. Krol, you're familiar with how  
22 Peoples Gas goes about their investigations?



1           A.    From my department's view, yes.

2           Q.    And from your department's view, you're

3 familiar with how you actually get assigned to

4 investigations?

5           A.    Yes, I am.

6           Q.    Are you familiar with how Peoples Gas, in

7 fact, starts investigations, what triggers an

8 investigation?

9           A.    Somewhat.

10          Q.    And what is that familiarity?  What do you

11 know?

12          MR. GOLDSTEIN:  Is this specific to Mr. McNabb's

13 property or just generally, Counsel?

14          MR. OOINK:  Just general unless Mr. -- I'm just

15 trying, again, to lay down a foundation so that I can

16 ask him specifically about Mr. McNabb's --

17          MR. GOLDSTEIN:  Why don't we just ask him that

18 and save a lot of time.

19          MR. OOINK:  I would prefer to lay a foundation,

20 if it's all the same to you, Mr. Goldberg.

21          JUDGE SAINSOT:  He can ask the procedure.  It's

22 overruled.

1                   Go ahead.

2       BY MR. OOINK:

3           Q.   Mr. Krol, what is the procedure within your  
4       department of receiving an investigation from  
5       Peoples Gas?

6           A.   We have different sources of how we get our  
7       requests for investigations.

8           Q.   And what are some of those different  
9       sources?

10          A.   A report of a sighted theft or -- there's a  
11       form we use where any employee could fill it out and  
12       request an investigation. We have certain lists,  
13       internal lists that we work off of that -- of  
14       properties that we would like to check because the  
15       service was off for a period -- a long period of  
16       time.

17          Q.   All these notices that you receive are  
18       internal as far as -- I mean, Peoples Gas -- someone  
19       within Peoples Gas gives you this notice; isn't that  
20       right?

21          A.   And we also have a hot line where anyone  
22       could call and call in a dangerous condition. We

1       also work closely with the City, the City inspectors.  
2       There's a lot of -- there's a lot of sources we use  
3       to initiate an investigation.

4             Q.   And your department -- you mentioned  
5       dangers.  You don't only investigate gas theft, is  
6       that right, or do you only investigate gas theft?

7             A.   Basically, gas theft and -- well, we  
8       consider gas theft a very dangerous condition.

9             Q.   Right.  But if somebody were to report a gas  
10      leak, you wouldn't go out and investigate?

11            A.   No, no.

12            Q.   So your department solely is based off of  
13      gas thefts?

14            A.   Yes, sir.

15            Q.   You were, in fact, the investigator that  
16      investigated 11411 South May Street?

17            A.   Yes, I was, along with my partner.

18            Q.   And that investigation took place on  
19      March 10th, 2004?

20            A.   Yes, it did.

21            Q.   Prior to your investigation of 11411, I'm  
22      sure there's some paperwork or information you

1 gathered before that; isn't that right?

2 A. Not my -- not me, myself, no.

3 Q. But you receive some paperwork on the  
4 premises before you go out to the investigation?

5 A. Yes.

6 Q. How much time typically -- or, if you  
7 remember in this case, when did you receive the  
8 documentation?

9 A. I don't remember. Usually, we gather our  
10 work on the day of the inspection to go out. At the  
11 time, we had representatives in the office that set  
12 up appointments for us. Paperwork would come from  
13 different departments within the company. But,  
14 usually, I would get that paperwork on the morning  
15 that I would go out, but not always.

16 Q. You mentioned paperwork. What does that  
17 paperwork entail?

18 A. Internal company documents that I use at the  
19 time of an investigation.

20 Q. And what's on those typically, generally? I  
21 don't need specifics.

22 A. The address, the last customer's name, the

1 account number, meter number, the fact that -- if  
2 there is a meter there, the last index; general  
3 information that I need to perform my investigation.

4 Q. And so you received that same paperwork  
5 before you went out on March 10th to go inspect  
6 11411 South May?

7 A. Yes.

8 Q. And you got a notice to do a gas theft  
9 inspection?

10 A. Yes.

11 Q. You didn't go out there to check for any gas  
12 leaks?

13 A. No.

14 Q. And in the paperwork that you got, you were  
15 notified that the main had been cut off on July 8th,  
16 2002?

17 A. I don't know if I had that paperwork or not.

18 JUDGE SAINSOT: Counsel, I don't understand that  
19 question. You have to rephrase it.

20 MR. OOINK: Okay.

21 BY MR. OOINK:

22 Q. Prior to your investigation or heading out

1 to 11411 South May Street, were you aware that the  
2 main had been cut off to the house on July 8th, 2002?

3 A. There are documents that would indicate it;  
4 but, you know, right now, I don't know if -- I don't  
5 remember if I had that document or not. I mean, if I  
6 did and I reviewed it, yeah, I would -- that's part  
7 of the information that I would have had. But I  
8 don't recall if I had that document with me at the  
9 time of my inspection.

10 Q. You recall, though, testifying at the  
11 previous hearing, though; correct?

12 A. I'll stand by my testimony of the previous  
13 hearing, if that's --

14 Q. So if I were to tell you --

15 A. I'm telling you today I don't recall.

16 Q. But if I were to tell you that in that  
17 testimony you, in fact, said that you knew the main  
18 was cut off on July 8th, 2002, you would agree with  
19 that?

20 A. Absolutely.

21 Q. Now, when Peoples Gas cuts off the main to a  
22 house, specifically 11411 South May, that means that

1 no gas would be pumped or traveling to that house?

2 A. Yes.

3 Q. Are you -- but you're -- the main was cut  
4 off on July 8th, 2002, but you didn't do your  
5 investigation until March 10th, 2004?

6 A. Correct.

7 Q. Are you aware of why Peoples Gas would have  
8 waited so long to send you out for an investigation  
9 if they cut off the main July 8th, 2002?

10 A. We had no reason to believe that there was  
11 gas going into the building.

12 Q. Prior to March 10, 2004?

13 A. I would phrase it "after the date you gave  
14 me that the main was cut." That's a better way to  
15 phrase it.

16 Q. And after the main is cut to a house,  
17 specifically 11411 South May Street, there is no  
18 physical way within the house that gas could be  
19 obtained?

20 A. No.

21 Q. You would, in fact, probably have to bypass  
22 the main somehow and route it to the 11411 South May

1 to get gas in the house after that; right?

2 A. "Reconnect the main" would be a better term;  
3 but, yeah, you're right.

4 Q. And you say reconnect the main. I imagine  
5 Peoples Gas takes precautions to prevent anybody from  
6 turning the main on after it's been cut off?

7 A. Traditionally, it's cut off in the parkway  
8 or in the street. Therefore, there -- you would have  
9 to dig -- literally, dig another hole and connect the  
10 two pipes again, yes. I would say yes.

11 Q. Now, I'd like to focus your attention on the  
12 specific investigation on March 10th, 2004. In your  
13 investigation report, you noticed that the meter  
14 had -- the lock was not on?

15 MR. GOLDSTEIN: I'm going to object. That's been  
16 testified to already.

17 MR. OOINK: Again, your Honor, the foundation  
18 is --

19 JUDGE SAINSOT: Overruled. He can lay a little  
20 foundation. He can proceed.

21 BY MR. OOINK:

22 Q. You noticed that lock wasn't on the meter?



1           MR. GOLDSTEIN: I'm going to make a continuing  
2       objection to all these questions, Judge, so I don't  
3       have to continue to make individual objections.

4           This has been testified to previously.  
5       Mr. McNabb had the opportunity to cross-examine  
6       Mr. Krol with respect to his investigation. He did  
7       ask a few questions, as did your Honor.

8           I was led to believe, based upon the last  
9       hearing that we actually held in this matter when the  
10      subpoena -- when the motion to quash the subpoena was  
11      denied, that Mr. Ooink's examination of Mr. Krol was  
12      going to be an examination of whether or not Mr. Krol  
13      had previously been out to the property prior to  
14      March 10th, 2004, and what the result of that  
15      investigation, if he had been out there, showed.

16          MR. OOINK: If I may --

17          MR. GOLDSTEIN: That was --

18          JUDGE SAINSOT: Hold on. Mr. Goldstein, I'm not  
19      sure I understand your -- so you're objecting  
20      because --

21          MR. GOLDSTEIN: Twofold basis.

22                 First of all, the basis is that Mr. Krol has

1 already testified to what his investigation showed.  
2 And he has been cross-examined with respect to that  
3 examination.

4 And, secondly, Mr. Ooink's support for the  
5 issuance of the subpoena, when we had the hearing and  
6 he made his oral presentation, was to the effect that  
7 his examination of Mr. Krol was going to be to  
8 determine whether Mr. Krol had been out to the  
9 property previous to March 10th, 2004, and, if so,  
10 what the result of that investigation showed.

11 JUDGE SAINSOT: Well, didn't you conduct  
12 discovery to find out what the witnesses were going  
13 to testify to?

14 MR. GOLDSTEIN: Pardon me?

15 JUDGE SAINSOT: Didn't you conduct any discovery  
16 to find out what his witnesses were going to testify  
17 to?

18 MR. OOINK: Judge, if I may address this just  
19 briefly. With all due respect to Mr. Goldstein --

20 JUDGE SAINSOT: Hold on. I don't understand  
21 what --

22 MR. GOLDSTEIN: What discovery -- why would I

1       need to perform discovery for that purpose to  
2       have -- for Mr. Krol's testimony?

3               JUDGE SAINSOT:   I don't understand what  
4       pigeonhole you're putting Mr. Krol --

5               MR. GOLDSTEIN:   I was led to believe that the  
6       subpoena was for a specific purpose.   And that  
7       purpose was to examine Mr. Krol with respect to what  
8       investigation, if any, that he had performed at  
9       11411 South May prior to March 10th, 2004.

10              That was the purpose that Mr. Ooink  
11       stated --

12              MR. OOINK:   Judge, Mr. Goldstein addressed an  
13       objection when he motioned to quash the subpoena.   As  
14       you recall, Judge, with all due respect to  
15       Mr. Goldstein's memory here, you denied that motion.

16              And, also, you denied Mr. Goldstein's oral  
17       motion to restrict Mr. Krol's testimony at that time,  
18       which he is trying to do now again as to why Mr. Krol  
19       is being called.

20              Mr. Krol is being called to clear up the  
21       record.   Mr. Krol is also being called to testify --  
22       and if Mr. Goldstein is going to continue to object

1 to everything I say, he would see that I am laying a  
2 foundation to show that Mr. Krol had no knowledge  
3 what the gas meter looked like before March 10th of  
4 his investigation in 2004.

5 JUDGE SAINSOT: Okay. Okay. For the record,  
6 your objection is duly noted, but it's overruled.

7 You can proceed.

8 BY MR. OOINK:

9 Q. Mr. Krol, in your investigation, you noted  
10 that the gas meter had not been locked?

11 A. Yes.

12 Q. But you also noticed that the gas meter was  
13 turned off and it should have been locked?

14 A. Yes.

15 Q. Now, Mr. Krol, you were not present -- you  
16 had never been in the house before March 10th, 2004;  
17 isn't that right?

18 A. That's correct.

19 Q. So in order for the gas meter to be locked  
20 and turned off, a serviceman from Peoples Gas would  
21 have to go to 11411 South May to do that?

22 A. Yes.

1           Q.   And you were not present or you didn't  
2   witness any serviceman lock -- or turn the meter off.

3           A.   No, I didn't.

4           Q.   You didn't witness any serviceman then,  
5   after you turned it off, lock the meter?

6           A.   No.   I wasn't present at the time the meter  
7   was locked, absolutely not.

8           Q.   Procedurally, though, Peoples Gas, whenever  
9   they turn off a gas meter, they're supposed to lock  
10   it; isn't that right?

11          A.   Yes.

12          Q.   But you're not absolutely certain whether  
13   this meter was ever locked?

14          A.   I don't know how you could ask me that  
15   question.   I told you I wasn't there.   I don't know  
16   what was done at any time prior to my investigation.

17          Q.   So then it's safe to say you're not certain  
18   if that meter was ever locked prior to you getting --

19          A.   You said that.   I didn't.   I'm saying that I  
20   don't -- I didn't lock it.   And I trust our records.  
21   And Counselor said it himself; that when we turn  
22   meters off, we lock them.   I'll stand by that.

1           Q.    Mr. Krol --

2           A.    Yes, sir.

3           Q.    -- are you personally aware, yourself, if

4           that meter was ever locked before your investigation?

5           A.    No, I'm not.

6           Q.    Now, in that investigation, you also noticed

7           that the meter had been moved or replaced; is that

8           right?

9           A.    The meter was not left the way we would set

10          a meter.

11          Q.    But during your course of investigation, you

12          ultimately opined that or thought that the meter had

13          been removed and replaced?

14          A.    Yes.

15          Q.    Okay.

16          A.    I found evidence to that.

17          Q.    And I'm going to get into that.

18          A.    All right.

19          Q.    And, in fact, you ultimately removed the

20          meter on March 10th, 2004?

21          A.    Yes.

22          Q.    And in doing so, you also plugged the inlet

1 pipe?

2 A. Yes, we did.

3 Q. Why did you remove the meter?

4 A. Because it's been down. It was down.

5 Q. I don't understand what you mean by down.

6 A. The meter was physically -- we hang the

7 meter on a bar and on two pipes, an inlet and an

8 outlet. When this meter is dropped or tampered with,

9 we remove it and have that meter tested. That's

10 standard procedure. And that's exactly what we did

11 on March 10th of 2004.

12 Q. Now, you said tested. Did you, in fact,

13 test this meter?

14 A. No. The City tests all our meters. We turn

15 them into the Division Street Meter Shop and the City

16 of Chicago tests the meters.

17 Q. Are there other reasons why a meter would be

18 removed?

19 A. Sure.

20 Q. What are some of those reasons?

21 A. For age. A different set of appliances.

22 You need a bigger meter. You need a smaller meter.

1       That's more in the service area.

2               I don't really suggest or go out -- that  
3       wouldn't be a part of my job description, to go out  
4       and make those kind of recommendations. But I just  
5       know that as general knowledge.

6           Q.   And to the best of your knowledge, you're  
7       not aware if this meter has ever been removed by  
8       Peoples Gas?

9           A.   No.

10          Q.   You don't know if the meter was replaced?

11          A.   No. I found this meter there.

12          Q.   Right. But before March 10th, 2004, you  
13       don't know if that meter had been moved by  
14       Peoples Gas at any point, do you?

15          A.   I could tell you that that meter was off of  
16       that bar and put back on.

17          Q.   But my question is, Mr. Krol, before  
18       March 10th, 2004, you don't know if a Peoples Gas  
19       serviceman went out to 11411 South May and did  
20       anything with that meter, do you?

21          A.   I personally don't know that.

22          Q.   So you don't know before March 10th, 2004,



1       if a Peoples Gas serviceman went out to 11411 and  
2       replaced the meter?

3           A.    If he would have replaced it, it wouldn't  
4       have been this meter.

5           Q.    Mr. Krol, I'm asking if you know personally.

6                    Do you know during your -- before that date,  
7       March 10th, 2004, whether that meter was replaced?

8           A.    I don't understand the question.  Our  
9       records show that a specific meter was assigned to  
10      that premise.  That's the meter I found at that  
11      premise.

12          Q.    Mr. Krol -- that's fine.  The meter that was  
13      there is the meter that your records show should have  
14      been there; isn't that right?

15          A.    Correct.

16          Q.    But as far as the meter ever being removed,  
17      replaced -- removed and replaced, meaning taken off  
18      and put back on, you don't know what happened with  
19      that meter before March 10th, 2004?

20          A.    I think I know where you're going with this  
21      question.

22          Q.    Mr. Krol, it's not a difficult question to

1       answer.

2           A.    All right.  Let me answer it this way.

3                    If what you're saying -- if I accept what  
4   Counselor is saying, that meter would never have been  
5   put back in place ready for service in the manner in  
6   which I found it.

7           Q.    Mr. Krol --

8                    JUDGE SAINSOT:  Well, I'm going to let that  
9   stand.

10           MR. OOINK:  That's fine.

11           BY MR. OOINK:

12                    Q.    Mr. Krol, if someone from Peoples Gas, a  
13   serviceman, went out to 11411 South May before  
14   March 10th, 2004, and did anything with that meter,  
15   you don't have any personal knowledge of it?

16           A.    No, but there are records that would show  
17   that.

18           Q.    You don't have those records with you today,  
19   do you?

20           A.    No, I don't.

21           Q.    Now, Mr. Krol, you being an investigator,  
22   you're familiar then with how procedurally the

1       servicemen have to install meters?

2           A.    No.   I'm more familiar with the way I do my  
3       job.   I'm not -- I was never trained as a serviceman.

4           Q.    Okay, Mr. Krol.   Then explain then how is it  
5       that you know how a meter should probably be  
6       installed then?

7           A.    Because I know we don't set gaskets on  
8       threads because that causes leaks and leaks are a  
9       dangerous condition.

10          Q.    So you're telling me, Mr. Krol, that you  
11       don't know the procedure a serviceman would go  
12       through to install a meter?

13          A.    I said I was never trained as a serviceman.  
14       As part of my job, it's not to install meters.

15          Q.    But, Mr. Krol, you know how a meter should  
16       properly be installed?

17          A.    I'll give you that, yes, I do.

18          Q.    You know that the rubber gasket on that  
19       inlet should not be on the threads?

20          A.    Yes, I do.   I just stated that.

21          Q.    And instead of it being on the threads, it  
22       should be on the pipe above the threads; isn't that

1 right?

2 A. Yes, it should.

3 Q. Because if it's on the threads, it's going  
4 to cause leaks?

5 A. Yes, it would.

6 Q. But you're not familiar with the procedures  
7 or training of servicemen assembly?

8 A. Again, you're twisting around my words  
9 again. I'm an investigator. I'm a field  
10 investigator. I'm not a serviceman.

11 JUDGE SAINSOT: Mr. Ooink, you've -- the horse is  
12 starting to die. Move on.

13 MR. OOINK: May I have a moment, your Honor?

14 JUDGE SAINSOT: Sure.

15 BY MR. OOINK:

16 Q. Mr. Krol, you don't know if a serviceman  
17 installed the meter properly, do you?

18 A. I wasn't there at the time of installation,  
19 no. But I do know, if I can follow up --

20 MR. OOINK: There is no question posed,  
21 your Honor. Objection.

22 THE WITNESS: Can I follow up, your Honor?

1 JUDGE SAINSOT: No. That's what Counsel is for.

2 MR. GOLDSTEIN: He's an adverse witness.

3 JUDGE SAINSOT: Oh, that's right.

4 What was the question again? Thank you for

5 reminding me, Mr. Goldstein.

6 MR. GOLDSTEIN: I think that under those

7 circumstances Mr. Krol ought to be able to complete

8 his answer.

9 JUDGE SAINSOT: Were you planning on calling him?

10 MR. GOLDSTEIN: No.

11 JUDGE SAINSOT: What was the question again?

12 (Record read as requested.)

13 JUDGE SAINSOT: Yeah, I'll allow him to clarify.

14 Go ahead.

15 THE WITNESS: A serviceman would never leave a

16 leak.

17 MR. OOINK: Objection to speculation.

18 MR. GOLDSTEIN: Well, your questions are all

19 speculation, Counsel.

20 JUDGE SAINSOT: Mr. Goldstein --

21 MR. GOLDSTEIN: I object to his --

22 JUDGE SAINSOT: Overruled.

1                   You can proceed.

2                   THE WITNESS:   The serviceman checks for leaks.  
3                   Servicemen never leave leaks.   After the meter was  
4                   set, the serviceman goes through a bunch of checks.  
5                   And one of them is he checks to make sure that the  
6                   meter or -- that the meter is not leaking, the piping  
7                   is in good shape, and the appliances are in good  
8                   shape.   He wouldn't leave that meter that way.

9                   BY MR. OOINK:

10                  Q.   Mr. Krol, it's possible to assemble the  
11                  meter in that way and not cause any leaks, isn't it?

12                  A.   I'll stand by my answer.   A serviceman  
13                  wouldn't set a meter in that manner.   He -- they  
14                  don't do that.

15                  Q.   Mr. Krol, that was not my question, though.  
16                  My question was whether --

17                  A.   You're asking me to speculate.   I'd rather  
18                  not speculate.

19                  Q.   Okay.   Then we'll address your testimony on  
20                  the trial then, the previous trial.

21                         Did you not state that that assembly could  
22                  cause leaks?   Isn't that what you said?

1           A.    If that's a part of the record, I'll stand  
2    by that.

3           Q.    You didn't say that it would definitely  
4    cause leaks?

5           A.    If that was a part --

6           MR. GOLDSTEIN:  You want to cite us to a  
7    transcript page, Counsel, instead of trying to  
8    determine what he actually said or didn't say.

9           MR. OOINK:  May I have a moment?

10          JUDGE SAINSOT:  Where are you going with this?

11          MR. OOINK:  Judge, as to the assembly of the  
12   meter, it could have been left that way.  It could  
13   have been assembled that way.  Mr. Krol does not  
14   know.  And in his testimony, he stated that it could  
15   cause a leak, not that it would cause a leak.  And  
16   now he is saying it would cause a leak.

17          JUDGE SAINSOT:  I think the testimony is pretty  
18   clear at this point that Peoples Gas has certain  
19   procedures that they follow.  And whether it can or  
20   could is not what he is saying.  So I'm going to ask  
21   you to move on.

22          MR. OOINK:  Okay.

1 BY MR. OOINK:

2 Q. Mr. Krol, during the course of your  
3 investigations of your eight years, you've  
4 investigated other properties where gas meters have  
5 been removed or replaced?

6 A. Yes.

7 Q. And during those investigations, one of the  
8 key notes you mentioned when a meter has been moved,  
9 the compression ring is sometimes visible?

10 A. That's one of them.

11 Q. And, also, you mentioned that the meter can  
12 never be installed in the same -- aligned in the same  
13 manner as it was prior to the first installation?

14 A. It would be very -- correct.

15 Q. You also said that you noticed some  
16 appliances in the house on your investigation  
17 March 10th, 2004?

18 A. Yes.

19 Q. You noticed what you referred to as a hot  
20 spot?

21 A. No.

22 MR. GOLDSTEIN: Could we get a transcript



1 reference, Counsel?

2 THE WITNESS: I could clear that up. I have my  
3 notes right here or -- if you'd like me to just move  
4 this thing along a little bit.

5 BY MR. OOINK:

6 Q. I will refresh your recollection.

7 Is your memory completely exhausted as to  
8 whether you referred to a hot spot in your  
9 investigation?

10 A. Not at all.

11 JUDGE SAINSOT: What is a hot spot?

12 MR. OOINK: I'm sorry. A hot point. I'm sorry.  
13 Let me rephrase.

14 THE WITNESS: Yes.

15 BY MR. OOINK:

16 Q. You noticed a hot point in your  
17 investigation?

18 JUDGE SAINSOT: What is a hot point?

19 MR. OOINK: I will get into it.

20 JUDGE SAINSOT: Okay.

21 MR. GOLDSTEIN: Where in the transcript is this,  
22 Counsel?

1           MR. OOINK:  If I have to -- he is saying that he  
2    did say it.  There is no need to reference a  
3    transcript.

4    BY MR. OOINK:

5           Q.  Mr. Krol, a hot point is a water heater?

6           A.  Yes, sir.

7           Q.  And you noticed a water heater at 11411  
8    South May on March 10, 2004?

9           A.  Yes, I did.

10          Q.  You also noticed a -- what you call a forced  
11   air furnace?

12          A.  To be more specific, yes, a 100,000 BTU new  
13   forced air furnace.

14          Q.  And you also noticed a range?

15          A.  Yes.

16          Q.  And you also noticed a dryer?

17          A.  That's what I have written in my notes, yes.

18          Q.  But you have no idea when any of these  
19   components were installed?

20          A.  No.  They were there on -- at the time of my  
21   inspection.

22          Q.  Which was March 10th, 2004?

1           A.    Yes.

2           Q.    You have no idea if they were installed

3           two days before March 10, 2004?

4           A.    No.

5           Q.    You have no idea if they were installed two

6           years before March 10, 2004?

7           A.    Correct.

8           Q.    And you have no idea if they were installed

9           during June 2nd, 1993, to July 8th, 2002?

10          A.    No.

11          MR. OOINK:  Nothing further at this time.

12          JUDGE SAINSOT:  You can step down, Mr. Krol.

13          THE WITNESS:  Thank you.

14          MR. OOINK:  Your Honor, at this point, Mr. McNabb

15          will take the stand.

16          JUDGE SAINSOT:  We're going to take a 10-minute

17          break.  My watch says 10 to 1:00.

18                               (Discussion off the record.)

19          MR. GOLDSTEIN:  I'm going to object to him

20          recalling Mr. McNabb, obviously.

21          JUDGE SAINSOT:  Mr. Goldstein, are you presenting

22          any witnesses?

1           MR. GOLDSTEIN:  No, I have no witnesses.

2           JUDGE SAINSOT:  I'm just asking because it's

3           lunch time.

4           MR. GOLDSTEIN:  I know.  I have no witnesses.

5           JUDGE SAINSOT:  Right.  Would it be feasible to

6           take a half-hour lunch and then get back here and --

7           that would -- I know it's kind of short, but that way

8           you could all get out sooner.

9           MR. OOINK:  That's fine by me.

10          JUDGE SAINSOT:  That's okay with you?

11          MR. GOLDSTEIN:  Sure.

12          JUDGE SAINSOT:  So we'll be back here at 1:20.

13                           (Lunch recess taken.)

14          JUDGE SAINSOT:  You're going to call Mr. McNabb?

15          MR. OOINK:  Yes.

16                           (Witness sworn.)

17          MR. GOLDSTEIN:  So we can get the objections out

18          of the way at the outset, Judge, I object to the

19          calling of Mr. McNabb.

20                   Mr. McNabb has previously testified in this

21          matter and has been cross-examined by me and asked

22          questions of him by you.

1                   Moreover, Mr. Ooink provided me with a  
2     notice of witnesses for today's hearing.   And  
3     Mr. McNabb's name is not on the notice of witnesses.  
4     And so I object to having Mr. McNabb called as a  
5     witness and having him examined by Mr. Ooink.

6           MR. OOINK:   Judge, as Mr. Goldstein so eloquently  
7     put it prior, we did have a hearing on this regarding  
8     what witnesses would be called and he was made aware  
9     that Mr. McNabb was, in fact, going to be called.

10                  I did not put it on the list of witnesses  
11     because Mr. McNabb is a party to the case.   And, as  
12     Mr. Goldstein just stated, he has an opportunity to  
13     cross-examine Mr. McNabb, but Mr. McNabb's testimony  
14     is not even barely complete as to the prior record.

15           JUDGE SAINSOT:   Hold it.   Hold it.   Hold it.

16                  Let's get back to the witness list and what  
17     happened.   Did you talk to each other after that or  
18     what happened after that?

19           MR. OOINK:   I just sent Mr. Goldstein a notice of  
20     the additional witnesses that I was intending to  
21     call.   Mr. Krol --

22           JUDGE SAINSOT:   When?

1           MR. OOINK:   He has a sheet in front of him.

2           MR. GOLDSTEIN:   Subsequent to the last hearing,  
3   Judge.   It's not dated, but it was subsequent to the  
4   last hearing.   And it does not say anything about  
5   additional witnesses.

6           JUDGE SAINSOT:   Subsequent, are you talking about  
7   the status hearing?

8           MR. OOINK:   Yes, it was after one of the status  
9   hearings.   I sent notice to Mr. Goldstein of what  
10   witnesses I was going to call.   I believe that  
11   witness list doesn't even include Mr. Krol on there.

12          MR. GOLDSTEIN:   It would have been -- I assume,  
13   based upon the fact that there were other documents  
14   attached to the notice of witnesses -- the notice of  
15   witnesses, that a subsequent document is dated  
16   September 16th, 2005, if that's any assistance.

17          JUDGE SAINSOT:   Okay.   I'm not clear as to what  
18   happened.

19                 You got a notice sometime in September from  
20   your opposing counsel and that doesn't have  
21   Mr. McNabb on the witness list?

22          MR. GOLDSTEIN:   He has a notice -- and I'll

1 provide it for you, Judge. It says that he gives  
2 notice that he intends to call the following  
3 witnesses at the rehearing.

4 JUDGE SAINSOT: All right. And what happened  
5 after that, if anything?

6 MR. GOLDSTEIN: Nothing.

7 MR. OOINK: Nothing. I got no response from  
8 Mr. Goldstein. And I would also like to draw your  
9 attention --

10 JUDGE SAINSOT: What I want to know is what you  
11 told Mr. Goldstein.

12 MR. OOINK: I didn't have any further  
13 communication with Mr. Goldstein up until this  
14 communication and whatever else transpired via our  
15 filings.

16 I would also like to draw to the Judge's  
17 attention in the -- in Mr. McNabb's motion for  
18 rehearing, petition for rehearing, it states  
19 specifically that Mr. McNabb would be testifying as  
20 to -- to clarify the record and add additional  
21 evidence.

22 JUDGE SAINSOT: What does that have to do with

1 notice to your opposing counsel?

2 MR. OOINK: Mr. Goldstein has notice as to the  
3 petition.

4 JUDGE SAINSOT: But at this point in time, which  
5 was much later than the petition for a rehearing, you  
6 told -- you served this document on Mr. Goldstein  
7 that does not list Mr. McNabb as a witness.

8 MR. OOINK: Nor does it list Mr. Krol.

9 JUDGE SAINSOT: But Mr. Krol you subpoenaed. So,  
10 therefore, Mr. Goldstein, by default -- there's no  
11 point in subpoenaing him if he is not going to  
12 testify. So, by default, Mr. Goldstein was on  
13 notice.

14 MR. OOINK: Judge, as to the list of witnesses,  
15 it was a courtesy to Mr. Goldstein as to what  
16 witnesses I was going to call as far as witnesses he  
17 was not aware of; but it was still -- all those  
18 witnesses are listed in the petition for rehearing.

19 Mr. Goldstein was noticed orally at his  
20 objection for any further testimony at one of the  
21 status hearings -- we can review the transcript -- at  
22 which time he was notified of Mr. Krol's further



1 testimony as to clearing up the record and to add  
2 evidence. Mr. Goldstein had notice.

3 MR. GOLDSTEIN: That occurred all prior to  
4 Mr. Ooink sending out the notice of witnesses.

5 JUDGE SAINSOT: So I -- as a lawyer, if I were  
6 looking at this, I would think that this is --  
7 lawyers amend their theories. So the later one would  
8 be the one that I would think would dominate.

9 MR. OOINK: Judge --

10 JUDGE SAINSOT: No, I'm sorry, you can't call  
11 him. You cannot call --

12 MR. OOINK: Judge, by no means is Mr. Goldstein  
13 prejudiced in this matter by me recalling Mr. McNabb.

14 JUDGE SAINSOT: Of course, Mr. Goldstein is not  
15 prejudiced. He's an attorney. His client is  
16 prejudiced.

17 MR. OOINK: Peoples Gas is not prejudiced. This  
18 is not a surprise. Peoples Gas is aware of  
19 Mr. McNabb. They know what he's going to testify to.  
20 This is not something that causes any type of  
21 prejudice whatsoever to Peoples Gas.

22 JUDGE SAINSOT: Calling a witness without notice

1       doesn't cause prejudice?

2               MR. OOINK:   Calling a party opponent, calling a  
3       party is not -- you do not have to -- rules of  
4       evidence do not -- civil rules of procedure do not  
5       require notice of calling the plaintiff himself.

6               He has a choice if he wants to testify.  If  
7       he wants to testify, that's fine.  The opposing  
8       counsel is on notice that the party will testify.

9               JUDGE SAINSOT:  Respond to that, Mr. Goldstein.

10              MR. GOLDSTEIN:  Well, I was never put on notice.

11              MR. OOINK:  Well, rules of Civil Procedure  
12       dictate --

13              MR. GOLDSTEIN:  I was only notified through that  
14       document as to who the witnesses would be.  If you  
15       will recall, the application for rehearing, there  
16       were numerous parties listed as potential witnesses.  
17       And I don't believe any of them were --

18              JUDGE SAINSOT:  What Supreme Court rule or rule  
19       of Civil Procedure says you don't have to notify that  
20       a party is going to testify?

21              MR. OOINK:  I would have to look that up.  I do  
22       not have it at my fingertips at this point, Judge.

1                   But by no means is Peoples Gas prejudiced by  
2                   me calling Mr. McNabb and by Mr. Goldstein not having  
3                   notice that Mr. McNabb, which in fact he did have  
4                   notice --

5                   JUDGE SAINSOT:   How could Peoples Gas -- I'm  
6                   sorry.   I'm not going to even -- there is -- no.  
7                   Your objection is sustained.   You're not calling  
8                   Mr. McNabb.   Call your next witness.

9                   MR. OOINK:   Mr. McNabb rests.

10                  MR. GOLDSTEIN:   I have no witnesses, Judge.

11                  JUDGE SAINSOT:   Okay.   For the record, I am going  
12                  to photocopy this and I can return it to you.   I'll  
13                  be back in a minute.

14                                   (Recess taken.)

15                  MR. OOINK:   Judge, at this point, we're asking to  
16                  reopen the case.   In Mr. McNabb's petition, a witness  
17                  that is notified by -- on that list is presently  
18                  here.   He was not here earlier.   Ottaway Smith (sic),  
19                  he is sitting in the room as we speak.   His testimony  
20                  is relevant.   And Mr. Goldstein was given notice that  
21                  he would be testifying.

22                  MR. GOLDSTEIN:   May I respond?

1 JUDGE SAINSOT: Yes, you may?

2 MR. GOLDSTEIN: I object, obviously.

3 Shortly before your Honor left the room to  
4 photocopy the notice of witnesses, I distinctly heard  
5 Mr. Ooink say that he had rested. That's it. It's  
6 all over. He cannot recall -- he cannot call a new  
7 witness. He's done. That's the purpose of having  
8 rested.

9 MR. OOINK: Judge, Mr. Stewart was not here  
10 earlier.

11 MR. GOLDSTEIN: It makes no difference, Judge.

12 JUDGE SAINSOT: Who is Mr. Stewart?

13 MR. OOINK: Mr. Stewart is sitting behind me as a  
14 witness that I anticipate calling. I don't  
15 anticipate his testimony to take that long, your  
16 Honor.

17 Peoples Gas is not prejudiced by  
18 Mr. Stewart's testimony, nor is Peoples Gas  
19 prejudiced by us reopening the case so that  
20 Mr. McNabb can complete the record, the reason for  
21 this rehearing.

22 JUDGE SAINSOT: So you're withdrawing your

1 earlier statement that you rest?

2 MR. OOINK: Yes.

3 MR. GOLDSTEIN: I don't believe he can, Judge.  
4 He has rested. The case is over. If Mr. Ooink  
5 wishes to make some kind of argument on behalf of his  
6 client, I obviously would have no objection, but he  
7 cannot call another witness.

8 JUDGE SAINSOT: There's no law that says he can't  
9 withdraw his resting. I'll allow him to call another  
10 witness.

11 MR. OOINK: At this point, we call Ottaway H.  
12 Stewart.

13 MR. GOLDSTEIN: Exception, Judge, for the record.  
14 I think you're incorrect.

15 JUDGE SAINSOT: I am sure this will not be the  
16 first or last time, Mr. Goldstein, on that score.

17 MR. GOLDSTEIN: No. That's true.

18 (Witness sworn.)

19

20

21

22

1 OTTAWAY STEWART,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. OOINK:

7 Q. Mr. Stewart, can you please introduce  
8 yourself to the Judge.

9 A. My name is Ottaway Stewart. My address is  
10 11350 South Loomis, Chicago, Illinois. I am a  
11 Chicago Transit -- I work for the CTA. And I'm  
12 classified as a tireman for the Chicago Transit.

13 Q. Mr. Ottaway (sic), could you please just  
14 spell your first name and last name for the record.

15 A. First name is Ottaway, O-t-t-a-w-a-y. Last  
16 name is Stewart, S-t-e-w-a-r-t.

17 Q. Mr. Stewart, how old are you?

18 A. 56.

19 Q. Are you married?

20 A. No.

21 Q. Do you have any children?

22 A. No.

1           Q.    And you said you've worked for the CTA how  
2    long?

3           A.    Yes, 32 years.

4           Q.    Okay.  Mr. Stewart, how are you familiar  
5    with Mr. McNabb?

6           A.    We have been friends for about -- at least  
7    about 17 years from high school.

8           Q.    So would you say you're close friends?

9           A.    Yes.

10          Q.    Would you ever lie on behalf of Mr. McNabb?

11          A.    No.

12          Q.    Are you familiar with the address  
13    11411 South May Street in Chicago?

14          A.    Yes.

15          Q.    How are you familiar with that address?

16          A.    That's a house that Jesse told me that he  
17    had acquired -- he had bought and he was going to --  
18    he was going to do it up.  I mean, you know, fix it  
19    up and then sell it.

20          Q.    Mr. Stewart, have you ever been in that  
21    house?

22          A.    Yes.

1           Q.    Approximately, how many times, if you know,  
2   have you been in that house?

3           A.    No more than three, three or four.

4           Q.    And the first time that you were in the  
5   house, do you recall when that was?

6           A.    Not the exact date offhand.  It was closer  
7   to -- in the wintertime, one of the winter months.

8           Q.    Do you know what year?

9           A.    Not offhand.

10          Q.    Do you recall if you were in the house  
11   during the period of July 2nd, 1993, and July -- I'm  
12   sorry, June 2nd, 1993, and July 8th, 2002?

13          A.    Yes.

14          Q.    During that period, was that the -- during  
15   that period, was that the first time you were in the  
16   house?

17          A.    No.  That was like the second or third time.  
18   He was -- already had fixed it.  He was fixing it up  
19   with some more friends of his that were fixing the  
20   house up.

21          Q.    Were you ever in the house before the house  
22   started having work done?



1           A.    Yes.   That was like the first time, but it  
2           was like the winter months when I went in.  He had  
3           came by my house to show me the house.  And he had  
4           showed me the house.  And no one was staying there,  
5           you know.  We just looked -- I just walked around in  
6           there and looked in it.  That was it.

7           Q.    So that was the winter months prior to  
8           June 2nd, 1993?

9           A.    Right.

10          Q.    At that time, can you describe what the  
11          house looked like on the outside?

12          A.    Some of the windows were out, you know.  And  
13          he had like kind of boarded some of that stuff up so  
14          nobody else would try to break into it.

15          Q.    And when you say he, you're referring to  
16          Mr. McNabb?

17          A.    Yes.

18          Q.    And did you go into the house at that time?

19          A.    Yes.

20          Q.    Could you describe what the inside of the  
21          house looked like?

22          A.    It was cold inside.  We walked downstairs.

1       And I think there was water downstairs.   And he was  
2       just showing me around in the house.   It hadn't even  
3       been fixed up yet.

4           Q.   And the first time that you were in the  
5       house, do you recall if it was the nighttime,  
6       daytime, when it was?

7           A.   It was in the evening time.

8           Q.   And do you recall if the electricity was on?

9           A.   No.

10          Q.   You don't recall or you don't know?

11          A.   I don't think electricity was on.

12          Q.   And what areas in the house did you look at?

13          A.   We went upstairs, all over the house.

14          Q.   And did you specifically look in the  
15       kitchen?

16          A.   Yes.

17          Q.   And in the kitchen, did you see a stove?

18          A.   No.   It was nothing in the kitchen.

19          Q.   Was there a refrigerator?

20          A.   No.

21          Q.   And the house has a basement as well?

22          A.   Right.

1 Q. Did you go into the basement?

2 A. Yes.

3 Q. And did you specifically -- did you see a  
4 furnace in the basement?

5 A. I think he was supposed to be -- I don't  
6 know if he had an old furnace or not in there, but I  
7 don't recall.

8 Q. Do you know if there was a water heater in  
9 the basement?

10 A. No, I don't recall offhand.

11 Q. And was there a washer and dryer in the  
12 basement?

13 A. No. Again, I don't recall.

14 Q. And what did the walls look like in the  
15 house?

16 A. Basically, he had to fix up everything. You  
17 know, that was my first time in there. And he was  
18 just showing me around the house. It was one of the  
19 houses that he had acquired and he was going to fix  
20 it up to sell it.

21 Q. During the period of June 2nd, 1993, and  
22 July 8th, 2002, when was the first time you were in

1 the house in that period?

2 A. July --

3 Q. June 2nd, 1993, and July 8th, 2002. Do you  
4 remember what year you were in the house again?

5 A. Probably the -- either that -- probably that  
6 winter. I mean, you know, it was one of the colder  
7 months. I know that.

8 Q. Of what year, though?

9 A. Let's see. I can't recall a year.

10 Q. But you remember it was between 1993 and  
11 2002?

12 A. Right.

13 Q. And that was the second time you were in the  
14 house?

15 A. It was -- right, second or first time.

16 Q. So it was -- so I'm clear, you --  
17 earlier you said when I asked you if -- June 2nd,  
18 1993, during that period, if you were -- if that was  
19 the first time you were in the house, you said no?

20 MR. GOLDSTEIN: Objection. Asked and answered.  
21 He's trying to rehabilitate his own witness.

22 MR. OOINK: I'm just trying to clear up the

1 record, Judge.

2 MR. GOLDSTEIN: He's trying to rehabilitate his  
3 own witness.

4 JUDGE SAINSOT: I'll allow it.

5 Go ahead.

6 THE WITNESS: I was in there -- like I said, it  
7 was in the colder months. It was not June or July.  
8 That was the first time I was there. The second  
9 time, like I said, when I was there, it was in the  
10 summertime when he started fixing it up.

11 BY MR. OOINK:

12 Q. Was that the summer -- do you know what year  
13 that was?

14 A. I can't recall the year.

15 Q. Was that the summer between 1993 and 2002?

16 A. It might have been.

17 Q. When you were in the house a second time,  
18 what was going on in the house?

19 A. He was fixing it up with some more friends  
20 of his.

21 Q. And what stage was he in, do you know?

22 A. They were just about -- they was, like, just

1 starting to -- really fixing it up.

2 Q. And how long did you stay in the house that  
3 time?

4 A. Oh, no more than about a minute or  
5 two minutes, yeah.

6 Q. Did you walk around then or no?

7 A. Not really, no.

8 Q. And the third time you were in the house, do  
9 you recall when that was?

10 A. Not exactly.

11 Q. Was that between the period of June 2nd,  
12 1993, and July 8th, 2002, or was it after that?

13 A. Probably after that.

14 Q. And do you recall what the house looked like  
15 then?

16 A. Oh, he had done some pretty good work on it,  
17 you know, him and the fellows he was working with.

18 Q. Did you walk through the house then?

19 A. Yeah, right, because he was working on it.

20 Q. How long did you stay in the house on that  
21 day?

22 A. No more than about five minutes.

1 Q. Did you walk in the basement?

2 A. Yeah. He was showing me that they had done

3 some work around the inside. All the inside work

4 they were still working on.

5 Q. Did you notice if -- so you did go into the

6 basement?

7 A. Yes.

8 Q. Did you notice if a furnace had been

9 installed or if a furnace was there?

10 A. I can't recall.

11 Q. Do you know if a water heater was installed?

12 A. Not offhand. I can't recall.

13 Q. And what about a washer or dryer?

14 A. No, I can't recall.

15 Q. And did you observe the kitchen on that day?

16 A. Yeah.

17 Q. Did you observe a stove or --

18 A. No. I really didn't pay no attention.

19 MR. OOINK: May I have a moment?

20 JUDGE SAINSOT: Hm-hmm.

21 BY MR. OOINK:

22 Q. Now, the first time that you went into the

1 house, Mr. Stewart, do you know if anybody was living  
2 there?

3 A. No, nobody was living there.

4 Q. And how about the second time?

5 A. No.

6 Q. And this third time, do you know if anybody  
7 was living there?

8 A. No.

9 Q. The first time that you went into the house,  
10 would you describe the condition of the house as  
11 livable?

12 A. No.

13 Q. And during the period of June 2nd, 1993,  
14 through July 8th, 2002, do you know if anybody was  
15 living in the house?

16 A. Not that I know of, no.

17 Q. But you didn't go by and check?

18 A. No.

19 MR. OOINK: Nothing further.

20 JUDGE SAINSOT: Any cross?

21 MR. GOLDSTEIN: Yes.

22



1 CROSS EXAMINATION

2 BY

3 MR. GOLDSTEIN:

4 Q. Mr. Stewart, I'm a little confused as to  
5 your visits to Mr. McNabb's property on South May  
6 Street.

7 A. Okay.

8 Q. Correct me if I'm wrong.

9 A. Okay.

10 Q. I assume that the first time you were there  
11 was prior to June 2nd, 1993; is that correct?

12 A. Correct.

13 Q. All right. And then there was a second time  
14 that you were there?

15 A. Right.

16 Q. And that second time, as I understood it,  
17 Mr. McNabb had already begun or was well on his way  
18 to fixing up the residence; is that right?

19 A. Yes.

20 Q. Do you recall when that was?

21 A. Not offhand.

22 Q. Was it -- could it have been subsequent to

1 July 8th, 2002?

2 A. No, I'm not sure.

3 Q. So you really don't know when the second  
4 time was that you were?

5 A. Not really, but it was in the summertime --  
6 it was like in the springtime.

7 Q. Okay. And during the three visits that you  
8 made to the house -- well, let's start with the first  
9 visit.

10 You went down to the basement; is that  
11 right?

12 A. Right. We was just looking over the house.

13 Q. Did you happen to notice where the gas meter  
14 was?

15 A. No, I didn't pay no attention.

16 MR. GOLDSTEIN: Okay. I have nothing else.

17 MR. OOINK: Nothing based on that.

18 JUDGE SAINSOT: You're excused. Thank you.

19 MR. OOINK: At this point, if you're still  
20 sustaining the objection not allowing Mr. McNabb to  
21 testify, I guess we will rest. Mr. McNabb rests.

22 JUDGE SAINSOT: I'm not in the habit of changing

1 my mind. Once I've made an evidentiary ruling, it  
2 stands.

3 Anything from Peoples now that he has  
4 rested?

5 MR. GOLDSTEIN: I have no witnesses, Judge. I've  
6 already put the witnesses on during the course of  
7 these proceedings.

8 JUDGE SAINSOT: Just checking.

9 Okay. Anything further?

10 MR. OOINK: Outside of argument, no.

11 JUDGE SAINSOT: Normally -- you can do closing  
12 arguments, if you wish. Sometimes counsel does post  
13 trial brief in lieu of the closing argument. It's  
14 really up to you.

15 MR. OOINK: Judge, I'd just like a brief oral  
16 argument at this time.

17 JUDGE SAINSOT: Okay.

18 MR. OOINK: You heard a few people testify here;  
19 most importantly, I think the testimony or the  
20 clarity -- the clarification of the record of  
21 Mr. Krol's testimony as to what information he had  
22 for his investigation, what information he had prior

1 to his investigation, which is nothing.

2 Mr. Krol had no knowledge of the property,  
3 no knowledge of the meter in this case prior to  
4 March 10th, 2004. His investigation revealed that  
5 somebody or something, someone, somehow tampered with  
6 the meter.

7 He then alleged that, by that tampering,  
8 Mr. McNabb, therefore, was the culprit of gas theft  
9 which brings us here today, as to the fictitious bill  
10 or the erroneous bill that Peoples Gas sent  
11 Mr. McNabb for the amount of \$6,354.95.

12 As you know, Judge, this is not something  
13 that -- Mr. McNabb bears a burden of proof in this  
14 case by a preponderance of the evidence to show that  
15 this bill is not correct.

16 This is a difficult thing to show for  
17 Mr. McNabb, a difficult burden of proof, because how  
18 do you show that somebody did not use gas when the  
19 meter was turned off? How does Peoples Gas show in  
20 their testimony how gas was, in fact, used?

21 Speculation. They run a number of  
22 calculations. They're estimates. How is Mr. McNabb

1 to defend himself? He has only to show that there  
2 were no appliances installed in the house that used  
3 gas; no one, in fact, lived in the house; and say  
4 that he did not -- by bringing the suit, did not  
5 steal gas from Peoples Gas.

6 Therefore, this bill is erroneous. It is  
7 not justified. Mr. McNabb stands accused here. And  
8 the testimony from Mr. Krol as to what he knew  
9 before -- and his investigation's wholly not  
10 credible. He has no idea what happened before  
11 March 10th, 2004.

12 Willie Traylor testified credibly that no  
13 one lived in the house. Mr. Traylor is a neighbor of  
14 Mr. McNabb. And he's lived there for a number of  
15 years. He never saw anybody coming and going. He  
16 never saw any lights on. He, in fact, entered the  
17 house, looked at it, saw that it was not livable.

18 During the alleged period of use of  
19 June 2nd, 1993, to July 8th, 2002, Mr. Traylor  
20 testified that no one was, in fact, living in the  
21 house. If no one is living in the house, who is  
22 going to be using gas? If no one -- if there is no

1 electricity being used in the house, who is going to  
2 be using the gas?

3 The gas was shut off on July 8th, 2002.

4 Mr. Krol testified that he knew that prior to going  
5 into his investigation, which is about all he knew  
6 about that house before his investigation.

7 For two years -- almost two years, there was  
8 no gas going in the house. That strongly suggests no  
9 one was living in that house during those two years.  
10 Someone is going to live in the middle -- in Chicago  
11 in the wintertime in a house with no electricity, no  
12 heat? That is ridiculous.

13 Mr. McNabb did not steal gas from  
14 Peoples Gas. Mr. McNabb does not owe the money  
15 \$6,354.95. This bill is fictitious through this  
16 rehearing and through the testimony that was  
17 previously elicited from the original trial.

18 Mr. McNabb has met his burden. I  
19 respectfully ask that you make a suggestion or  
20 recommendation to the Illinois Commerce Commission to  
21 grant Mr. McNabb's petition, his complaint, to  
22 absolve him of this fictitious bill by Peoples Gas

1       and this accusation that Mr. McNabb stole gas from  
2       Peoples Gas, which he did not do.

3               JUDGE SAINSOT:   Anything further, Counsel?

4               MR. OOINK:   No.

5               MR. GOLDSTEIN:   Well, it's sort of hard to try to  
6       figure out where to start with a response.

7               I think the simple response is that  
8       Peoples Gas has not accused Mr. McNabb of stealing  
9       gas.   What we have said and proven is that there was  
10      a theft of gas service.

11              Mr. Krol can only testify as to his  
12      inspection, what he saw at the time of his inspection  
13      on March 10th, 2004.   It's very well documented in  
14      the first three exhibits that have been admitted into  
15      evidence in this case; the photographs, the  
16      inspection summary, and everything else that he noted  
17      in those exhibits and his testimony that occurred  
18      back last November.

19              So with respect to anything that occurred  
20      prior to that, obviously, Mr. Krol could not testify.  
21      To speculate, as Mr. Ooink did in his cross  
22      examination of Mr. Krol, that somehow Peoples Gas

1 personnel tampered with the meter is totally  
2 outrageous and outlandish because if that were to  
3 occur, even in a very incredibly small fraction of  
4 cases where meters are installed, there would be  
5 substantial explosions all over the city of Chicago.

6           There are hundreds and hundreds of  
7 thousands, at least 600,000, gas meters in the city  
8 of Chicago. And there's a good reason why it took so  
9 long between July 8th, 2002, and March 10th, 2004, to  
10 get somebody out there. And the answer is simple.

11           There are hundreds and hundreds of thousands  
12 of meters that are inspected. And one could not  
13 expect that the next day after the meter is shut off  
14 that somebody is going to go out there and make an  
15 inspection to make sure that it is off.

16           It is quite clear from the testimony of  
17 Mr. Krol the first time around that there was meter  
18 tampering. And we do not have to prove that  
19 Mr. McNabb tampered with the meter. We only have to  
20 prove that he received the benefit of that tampering.

21           And I believe we've done that the first time  
22 around. I believe the order that the Commission



1 entered the first time around indicated that there  
2 was tampering and that Mr. McNabb received the  
3 benefit of that tampering, and that's all we have to  
4 show.

5 With respect to Mr. Ooink's other witnesses,  
6 to say that their testimony was flimsy with respect  
7 to what actually occurred at the house would be very  
8 generous on my part.

9 Mr. Traylor was the first witness. He had  
10 only been in there on one single occasion in a  
11 10-year period. What happened prior to that date in  
12 1997 and subsequent to that date he could not testify  
13 to.

14 With respect to Mr. Stewart's testimony, we  
15 just went through that. He wasn't even clear on the  
16 dates when he was actually there. So his testimony,  
17 while given in good faith, I believe, really goes to  
18 prove nothing. It does not set any time line. And  
19 it has no -- does not provide any credible evidence  
20 of anything.

21 Finally, the mere fact that one -- a person  
22 is or is not living in a residence does not mean that

1       there was no gas consumed at that residence. And on  
2       that basis, I believe that we've proven that there  
3       was tampering. Mr. McNabb received the benefit of  
4       that tampering.

5               Our rebilling was a proper rebilling that  
6       has not been brought into question at all in this  
7       rehearing. And as -- your Honor knows that I'm going  
8       to continue to beat the drum that, obviously, the  
9       Commission has lost jurisdiction to even enter an  
10      order on rehearing. Thank you.

11             JUDGE SAINSOT: Okay. Thank you. The record  
12      will be marked heard and taken and I will issue an  
13      order.

14                       (HEARD AND TAKEN.)

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